IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6218 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANAKSINH MOHANSINH MANGROLA - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BB NAIK for Applicant(s) : 1,
MS MANISHA L SHAH, APP for Respondent(s) : 1,
MR DHARMESH V SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 25/08/2006

CAV JUDGMENT

1. Rule. Ms. Manisha Shah, Ld. Addl. Public Prosecutor waives the service of Rule on behalf of opponent no. 1 – State and Mr. Dharmesh Shah, Ld. Advocate waives service of rule on behalf of opponent no. 2.

2. The applicant has approached this Court under under Section 439 of the Code of Criminal Procedure since he has been detained in judicial custody from 13th June, 2006 in connection with offence registered at C.R. No. I-52 of 2004 for the alleged commission of offences wich are made punishable under sections 406, 408, 409, 418, 467, 468, etc., read with section 120-B of the Indian Penal Code [for short 'IPC'] with DCB Police Station, Surat. The allegation is that the applicant at the relevant time was the Chairman of Suryapur Cooperative Bank at Surat [hereinafter referred to as 'the Bank'] and he and other members of the Board of Directors committed grave irregularities in the matter of disbursement of loan and without following the due procedure advanced loans of huge amounts to their friends and near relatives. As a result of the same, the Bank suffered substantial financial losses and it withdrew from the Clearing House with effect from 31st August, 2002. In the month of September 2002 the Reserve Bank of India intervened and issued order under section 35-A of the Banking Regulations Act restraining the Bank from transacting the business and making payments of an amount over Rs.1,000/= to the customers. In view of the same, one Dharmendrasinh Pravinsinh Thakor lodged FIR on 12th August, 2004 with the DCB Police Station, Surat for the aforesaid offences against the erstwhile Directors of the Bank including the present applicant. This FIR was filed in view of cash credit accounts opened in favour of M/s. Lakhia Brothers and Bapunagar Auto Centre of Ahmedabad. The allegation is that the requisite procedure was not followed in granting these facilities to M/s. Lakhia Brothers and Bapunagar Auto Centre and in doing so, the applicant and other Directors of the Bank had derived personal wrongful benefits. The said accounts have been numbered as C.C. Account No. 49 and C.C. Account No. 50 respectively. The over-draft facility that has been granted is to the extent of Rs.82 lacs. The informant is the Administrator appointed by the Registrar, Cooperative Society.

2.1. It may be noted here that initially the applicant was arrested on 12th August, 2004 and he was produced before the Chief Judicial Magistrate, Surat on 13th August, 2004. Thereafter, the Ld. Sessions Judge, Surat by order dated 1st September, 2004 granted bail to the applicant. However, the said order was stayed upto 6th September, 2004 since the State wanted to approach this Court with a prayer for cancellation of bail. However, since the State could not obtain order regarding cancellation of bail till 6th September, 2004, the applicant was released by the Ld. Sessions Judge. Subsequently this Court by order dated 5th November, 2004 partly allowed the application of the State for cancellation of bail being Criminal Misc. Application No. 8571 of 2004 and remanded the matter to the Ld. Sessions Judge for deciding it afresh on merits. However, till such time the application could be decided the applicant was continued on bail. On 13th April, 2005 the Ld. Sessions Judge, Surat rejected the application of the present applicant for bail, but stayed the order for a period of 15 days to enable the applicant to approach this Court. The applicant preferred Criminal Misc. Application No. 4447 of 2005 before this Court, which was rejected by this Court vide order dated 11th May, 2005 on the ground that the application was not maintainable since the applicant was not in custody. In other words, the order of rejection was not on merits of the case.

2.2. The applicant thereafter approached the Apex Court by filing Special Leave Petition [Criminal] No. 2937 of 2005 challenging the order dated 11th May, 2005. The Apex Court on 27th May, 2005 issued notice and directed the DCB Police, Surat not to arrest the applicant. By order dated 7th April, 2006 the Apex Court granted leave and the proceedings were numbered as Criminal Appeal No. 393 of 2006, wherein order dated 11th May, 2005 of this Court was quashed and the matter was sent back to this Court for considering it on its merits. The applicant was directed to remain present before this Court on 21st April, 2006. This Court by its order dated 26th April, 2006 in turn remanded the matter to the Ld. Sessions Judge, Surat for deciding the

application afresh on its merits. The applicant was directed to be continued on bail till the disposal of the application. On 13th June, 2006 the Ld. Sessions Judge rejected the application and the applicant was taken into judicial custody.

2.3. All throughout the pendency of the proceedings before this Court, the proceedings were being listed before the co-ordinate Bench [Coram : RP Dholakia, J.]. However, in view of order dated 21st June, 2006 passed by the Ld. Judge, not to list the said matter before him, the Ld. Acting Chief Justice by order dated 21st June, 2006 has ordered it to be placed before this Court and that is how I am now required to deal with this application.

3. On behalf of the applicant, oral as well as written submissions have been made. Moreover, copies of various judgments of the Apex Court as well as this Court and compilation of certain documents on which reliance has been placed by the Ld. Advocate Mr. BB Naik for the applicant, have been supplied. As against that, Mr. Dharmesh Shah, Ld. Advocate for the Bank has filed affidavit of the informant himself. This is over and above the oral submissions that have been advanced during the hearing. Ms. Manisha L Shah, Ld. APP has filed affidavit on behalf of the State and has also advanced oral submissions.

3.1. It is mainly submitted by Mr. Naik that due to the efforts of the applicant substantial amount in the accounts in question has been repaid. It is his submission that the applicant was in the management of the Bank as the Chairman only upto 26th February, 2000. All the transactions in question have taken place subsequent to February 2000 and the applicant has no role to play in those transactions. It is submitted by him that during the period between 6th September, 2004 and 13th June, 2006 the applicant was on bail and no complaint whatsoever has been made regarding any misuse of liberty by him or tampering with the witnesses. It is his submission that when this was the

conduct while the applicant was on bail, there is no need to detain him in custody during the pendency of the trial. He has advanced certain incidental submissions also to substantiate the aforesaid main submissions and has also placed reliance on certain decisions as well as documents in support of the contentions raised by him.

3.2. This application is, however, vehemently opposed by the State. Ms. Manisha l Shah, Ld. APP has vehemently submitted that the applicant even after his ceasing to be the Chairman of the Bank, has taken active interest in the affairs of the Bank, especially in the matter of committing irregularities and disbursement of loans of huge amounts to various persons and thereby he is also responsible in bringing about the downfall of the Bank. According to him, the so called repayment is merely show made by the applicant and his associates taking shelter under the guidelines for Adjustment/Set off of Deposits in Non-performing Assets of Urban Cooperative Banks prescribed by the Reserve Bank of India [RBI]. She has submitted that the depositors were called at the residence of the applicant by offering a meagre amount to them and their deposits were purchased and they were adjusted against the outstanding which is not permissible even as per the guidelines of the RBI. In her submission, since the applicant has committed fraud of crores of rupees, he does not deserve bail.

3.3. Mr. Dharmesh Shah, Ld. Advocate appearing for opponent – Bank has submitted that as per the bank the total outstanding of C.C. Accounts Nos. 49 and 50 is of Rs.12,36,600/= and Rs.35,49,370/= respectively. It is submitted that so far the applicant is concerned, by adjustment of deposits upto Rs.1 lac as per the aforesaid adjustment, he has cleared 61 accounts out of 82. He has of-course prayed for rejection of the application for bail.

3.4. Apart from this, in view of the affidavit of the bank, Mr. Naik has also stated that without prejudice to his defence, rights and contentions in the trial or other legal proceedings, the applicant is willing to deposit a sum of Rs.50 lacs [Rupees Fifty Lacs only] in the bank by four equal instalments.

4. I have perused record of the case. I have also taken into consideration the oral as well as written submissions tendered by the learned counsels for the parties. It appears that so far the present applicant is concerned, the investigating agency has collected certain material to substantiate its case against him. But considering the fact that the main grievance of the bank as well as the State is that the applicant has defalcated public money, the willingness expressed by the applicant to deposit the amount will be required to be given due consideration. So far the other factors relevant for grant of bail are concerned, it is an admitted position that the applicant was on bail between 6th September, 2004 and 13th June, 2006, there is no allegation that he has ever tried to abscond or tamper with the record or witnesses. Of-course to ensure that if the applicant is securing his release upon the willingness to deposit the amount, appropriate direction can be given to the applicant with a view to see that he acts according to the willingness expressed and deposits the amount. It is submitted by Mr. Naik that the applicant shall deposit a sum of Rs.12,50,000/= on or before 30th September, 2006 and other three equal instalments of Rs.12,50,000/= each on or before 31st October, 30th November and 31st December, 2006. He has also submitted that within a week of his release from the custody on bail, he will furnish undertaking on oath before this Court to aforesaid effect. In view of the above, I am of the opinion that bail can be granted to the applicant. Hence, the following order :-

5. Considering the submissions made on behalf of the parties and having regard to the facts and circumstances of the case, the application is allowed and applicant is ordered to be released on bail in connection with

Crime Register No. I-52 of 2004 registered at DCB Police Station, Surat, for the offences alleged against him in this application on his executing bond of Rs.50,000/= (Rupees Fifty Thousand only) with one solvent surety of the like amount to the satisfaction of the lower Court and subject to the conditions that he shall,

a) not take undue advantage of his liberty or abuse his liberty;

b) not to try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) not leave the local limits of State of Gujarat without the prior permission of the concerned Sessions Judge.

f) mark presence before concerned Police Station once in a month i.e., on any day between 1st and 10th day of every month, any time between 11.00 a.m and 5.00 p.m till commencement of trial;

g) furnish the address of his residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

h) surrender his Passport, if any, to the lower court within a week;

i) applicant shall deposit a sum of Rs.12,50,000/= on or before 30th September, 2006 and other three equal instalments of Rs.12,50,000/= each on or before 31st October, 30th November and 31st December, 2006.

j) shall file undertaking before this Court to the aforesaid effect within one week of his release.

6. If any default is committed in compliance with conditions nos. (i) and (j), the bail shall automatically stand cancelled.

7. Bail before the lower Court having jurisdiction to try the case. It

would be open to the trial court concerned to give time to furnish the solvency certificate if prayed for.

Rule is made absolute. Direct service today is permitted.

[AKSHAY H. MEHTA, J.]

* Pansala.